

**STATE OF MICHIGAN
IN THE SUPREME COURT**

SHANNON BITTERMAN,
Plaintiff/Appellant,

v.

Supreme Court Case No.: 151520
Court of Appeals Case No.: 319663
Lower Court Case No.: 13-019397-CZ-2

CHERYL BOLF,
Defendant/Appellee

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REPLY BRIEF

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REPLY ARGUMENT

NOW COMES Appellant Shannon Bitterman, by counsel, and offers this short reply to identify a few issues within Bolf's appellee brief.

First, Bolf spends a substantial portion of her brief arguing that Bitterman failed to establish the requisite intent necessary to sustain a violation of the *Open Meetings Act*. Neither the Circuit Court nor the Court of Appeals reached this issue. Both courts limited their analysis solely to whether Bolf was a "public official" under MCL 15.273. More critically, the issue over the requisite necessary intent is not before this Court as the issue was (specifically) not raised on this appeal. MCR 7.302(H)(4)(a) limits Bolf to "the issues raised in the application for leave to appeal." Bolf has violated MCR 7.302(H)(4)(a) by arguing beyond the scope of the filed application. Had Bolf desired this Court to review the element of intent under MCL 15.273, she could have either cross-appealed or requested an expansion of the appeal by motion pursuant to MCR 7.302(H)(4)(b). She did neither. As such, the sole issue on appeal is whether clerk of a Michigan village, as duly-elected by her fellow citizens by general election, is a 'public official,' especially when she conceded she was the same by her pleadings. See **Answer, ¶12.**

Second, Bitterman has alleged by her application that both *People v Whitney*¹ and the Court of Appeals panel in this case (following *Whitney*) committed error in failing to apply the common, ordinary definition of 'public official' via the mandatory rules of statutory interpretation. Contrary to Bolf's suggestion, *Whitney* is neither instructive,

¹ *People v Whitney*, 228 Mich App 230; 578 NW2d 329 (1998).

helpful, nor binding² because *Whitney* dealt with an appeal in the Court of Appeals involving the intent element to a charge under a different, albeit similarly worded, criminal subsection of the *Open Meetings Act*. The real issue here is actually simple and direct: what is a public official? Bolf provides a complicated and messy analysis to try to avoid making herself a 'public official' despite being an elected governmental officer of a Michigan village. MCL 62.1(1) ("the following officers shall be elected: a president, 6 trustees, 1 clerk, and 1 treasurer."). Yet, this Court has clearly explained how the lower courts are to interpret undefined terms in a statute: use its plain and ordinary meaning. MCL 8.3a; *Brackett v Focus Hope, Inc*, 482 Mich 269, 276; 753 NW2d 207 (2008). A dictionary may be consulted if needed. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). Black's Law Dictionary defines public official as "[o]ne who holds or is invested with a public office; a person elected or appointed to carry out some portion of a government's sovereign powers." BLACK'S LAW DICTIONARY 8TH ED., p. 1119. Expectedly, Bolf does not cite even a single dictionary or provide a dictionary definition in the entirety of her appellee brief, likely because no dictionary definition supports her tortured and twisted suggestion that she is not a public official.

CONCLUSION

This Court has a simple request before it: correcting the unordinary definition given by the lower Court of Appeals' panel to the term 'public official.'

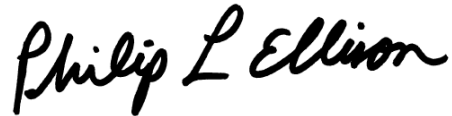
² For some reason, Bolf incorrectly asserts that *People v Whitney* was a decision of this Court. See Appellee Br, p. 12 ("However, this Court has confirmed the elements to be proven with regard to a charge under the criminal provision of the statute, which contains exactly the same language" citing *People v Whitney*, 228 Mich App 230; 578 NW2d 329 (1998)). The Court of Appeals has but this Supreme Court has not done so and has never done so. However, this Court is, of course, not bound by *Whitney*. *Catalina Mktg Sales Corp v Dep't of Treasury*, 470 Mich 13, 23; 678 NW2d 619 (2004).

RELIEF REQUESTED

For the reasons cited herein, Appellant Shannon Bitterman respectfully requests this Court, pursuant to MCR 7.302(H), to preemptory reverse the Court of Appeals' decision that a duly-elected clerk is not a public official and instead conclude Bolf, as the individual elected to the public position of village clerk, is a public official under MCL 15.273(1), together with direction to remand to the Circuit Court for further consideration.

In the alternative, this Court is requested to grant leave pursuant to MCR 7.302(H) on the issue of "who is a public official."

RESPECTFULLY SUBMITTED:



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